IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8334 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DUSHYANT @ DUSHYO VINODBHAI NIKHAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8334 of 2001

MR HN JHALA for Petitioner No. 1

MR YV VAGHELA for Petitioner No. 1

MR JOSHI, Ld. AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/01/2002

ORAL JUDGEMENT

1. The petitioner has been detained under Prevention of Anti Social Activities Act, 1985, by virtue of an

order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad dated August 6, 2001 in exercise of power under Section 3 of the said Act.

2. The petitioner seeks to challenge the said order in this petition under Article 226 of Constitution of India on various grounds stated in the petition.

3. The grounds of detention indicate that the detenu has been branded as a bootlegger. The Detaining Authority took into consideration one registered offence against the detenu registered with the Khadia Police Station under Bombay Prohibition Act. The Authority took into consideration statements of two anonymous witnesses recorded on 1st and 2nd august, 2001 respectively. Those statements were verified by the Detaining Authority on 4-8-2001 and order was passed on 6-8-2001. The grounds of detention indicate that the Detaining Authority was satisfied that the detenu was involved in bootlegging activities, which were detrimental to public health and public order. The Authority observed that the witnesses suffer from a genuine fear qua the detenu and, therefore, their identity is required to be kept anonymous. The Authority observed that for this purpose powers under Section 9(2) of the Prevention of Anti Social Activities Act are required to be exercised against the right of the detenu of making an effective representation and, therefore, the identity of the witnesses was not disclosed. The order came to be passed by the Authority after considering the possibility of resorting to less-drastic remedies. The learned Counsel for the petitioner submitted that some of the documents supplied to the detenu are not legible. He has drawn the attention of this Court to Page No.69 and 70 of the compilation, which is a report to the Metropolitan Magistrate for remand made by Senior Police Inspector and the order passed thereunder.

3.1 The learned Counsel for the petitioner submitted that the powers under Section 9(2) of the Prevention of Anti Social Activities Act are not properly exercised by the Detaining Authority and that verification is not proper regarding genuineness of the fear expressed by the witnesses and the powers exercised under Section 9(2) of the Prevention of Anti Social Activities Act are not exercised in larger public interest. Reliance was placed on the decision of this Court in "Israil alias Israr Pahelvan Nazirahmed Shaikh v. State of Gujarat" 2001(1) GLR, 306 and "Bai Amina w/o Ibrahim Abdul Rahim Alla v. State of Gujarat", 1981 GLR, 1186.

4. The petition is opposed to by the learned AGP, Mr.Joshi.

5. Having regard to the contention raised before this Court, at the outset it may be noted that, in the compilation, as rightly pointed out by the learned Counsel for the petitioner, page No.69 and 70 are not legible. This aspect is, in all fairness, conceded to by the learned AGP, Mr.Joshi. Therefore, so far as the registered offence is considered, right of the detenu of making an effective representation is infringed, which would vitiate his continued detention.

6. So far as the statements of witnesses are concerned, it has to be observed that there is nothing on record to indicate that the Detaining Authority, before recording satisfaction about genuineness and correctness of the fear expressed by the witnesses undertook the exercise of verifying as to whether the fear is genuine or imaginary as held in the case of "Bai Amina w/o Ibrahim Abdul Rahim Alla v. State of Gujarat" (supra). The Authority has to examine general background, character, antecedents, criminal tendency or propensity etc. of the detenu and such of those matters as are relevant in the context of the informant and carefully examine whether the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alia, to protect himself against the falsity of his version. This can be done only by cross-checking the version given by such anonymous witnesses. Witness who has given a version before the sponsoring authority is ordinarily bound to support the same before the verifying authority and, therefore, the version has to be tested through other independent exercise and material. Such contemporaneous material is not found to have been prepared by the Detaining Authority. As a result, the satisfaction recorded by the detaining authority cannot be accepted as genuine in law.

7. The petition deserves to be allowed for the foregoing reasons and the same is allowed. The order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad on August 6, 2001, detaining the petitioner, Dushyant alias Dushyo Vinodbhai Nikhal is hereby quashed and set aside. The petitioner, Dushyant alias Dushyo Vinodbhai Nikhal be released from detention forthwith, if not required in any other case. Rule is made absolute with no orders as to costs. Direct service is permitted.

10-1-2002 (A. L. Dave, J.)

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